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Att'y Docket No. P20085

Customer No.: 07055

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

Applicant : Jean-Claude MONGRENIER Confirmation No. 3501
Appln. No. : 09/647,921 U.S. Patent No. 6,285,285
Filed : November 13, 2000 Issued: September 4, 2001
For : DEVICE FOR ASSOCIATING A CONTAINER AND A COMPUTERIZED
DEVICE MONITORING ITS CONTENTS

PETITION TO ACCEPT DELAYED PAYMENT
OF MAINTENANCE FEE UNDER 37 C.F.R. 1.378(b)

Commissioner for Patents
U.S. Patent and Trademark Office
Customer Service Window, Mail Stop _____
Randolph Building
401 Dulany Street
Alexandria, VA 22314

Certificate of Transmission

I hereby certify that this correspondence is being facsimile trans-
mitted to the United States Patent and Trademark Office, Fax No
(571) 273-8300 on 2/1/2012 (Date).
Typed or printed name of person signing this certificate:
Angie Roisfeld
Signature: *Angie Roisfeld*

Sir:

This is a petition under 37 C.F.R. 1.378(b) to accept delayed payment of the maintenance fee due on the above-identified patent, whereby the patent will not be considered as having been expired.

The above-identified patent was issued on September 4, 2001. The first maintenance fee was paid on March 3, 2005 and the second maintenance fee could have been paid with the surcharge set forth in 37 C.F.R. 1.362(e)(1) as late as September 4, 2009. Since the maintenance fee was not paid, the patent expired after midnight on September 4, 2009.

A petition to accept an unavoidably delayed payment of a maintenance fee must include:

- (1) the required maintenance fee set forth in Section 1.20 (e) through (g);
- (2) the surcharge set forth in Section 1.20(i)(1); and
- (3) a showing that the delay was unavoidable since reasonable care was taken to ensure that the maintenance fee would be paid timely and that the petition was filed promptly after the patentee was notified of, or otherwise became aware of, the expiration of the patent. The showing must enumerate the steps taken to ensure timely payment of the maintenance fee, the date and the manner in which patentee became aware of the expiration of the patent, and the steps taken to file the petition promptly.

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COMPLIANCE WITH REQUIREMENTS UNDER 37 C.F.R. 1.378(b)***(1) MAINTENANCE FEE***

The required second maintenance fee of \$2,850.00 as set forth in Section 1.20(f) is enclosed herewith.

(2) SURCHARGE

The required surcharge of \$700.00 as set forth in Section 1.20(i)(1) is enclosed herewith.

(3) SHOWING OF UNAVOIDABLE DELAY

As corroborated in the attached Statement by Ms. Hélène Agniel, an employee of the French law firm of Cabinet John Schmitt, the delay in paying the second maintenance fee was unavoidable and this grantable petition was promptly prepared and submitted after the patentee was notified of the expiration of the patent.

The undersigned states that the delay in payment of the maintenance fee was unavoidable. This statement is based on information provided to the undersigned as outlined below:

The patentee engaged the French law firm of Cabinet John Schmitt to prepare and file a French patent application No. 98/04802 on April 14, 1998 and an International Application No. PCT/FR99/00850 on April 13, 1999 claiming the priority of the French application. The patentee desired to file a National Stage of International application in the U.S. Patent and Trademark Office, and Mr. John Schmitt contacted the law firm of Greenblum & Bernstein, P.L.C. [hereinafter "Greenblum & Bernstein"] to prepare the application and enter the U.S. national stage. Greenblum & Bernstein prosecuted the application until it matured into a patent on September 4, 2001.

Greenblum & Bernstein requested instructions from Cabinet John Schmitt for payment of the first maintenance fee. Cabinet John Schmitt instructed Greenblum & Bernstein to pay the first maintenance fee, and Greenblum & Bernstein paid the fee on March 3, 2005. On April 20, 2005,

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in reporting the payment of the first maintenance fee, Greenblum & Bernstein informed Cabinet John Schmitt that payment of the second maintenance fee would be due, without surcharge, by March 4, 2009.

In 2006, Greenblum & Bernstein changed their maintenance fee policy and on March 16, 2006 sent a letter to Cabinet John Schmitt informing the French law firm that, effective January 2007, Greenblum & Bernstein would no longer be responsible for the docketing and payment of U.S. maintenance fees. Moreover, Greenblum & Bernstein informed Cabinet John Schmitt that they would no longer forward any reminders or correspondence from the U.S. Patent and Trademark Office pertaining to maintenance fees. Greenblum & Bernstein further informed Cabinet John Schmitt of several annuity services that could assist them in the docketing and payment of U.S. maintenance fees.

Cabinet John Schmitt acknowledged the new Greenblum & Bernstein maintenance fee policy and that Cabinet John Schmitt would be responsible for monitoring and paying U.S. maintenance fees in patents obtained by Greenblum & Bernstein.

In normal course of business, Ms. Hélène Agniel is responsible monitoring maintenance fees for Cabinet John Schmitt clients who have received U.S. patents. In particular, upon receipt of the U.S. Letters Patent, Ms. Agniel contacts Computer Patent Annuities (CPA) and provides instructions for CPA to docket for payment, send reminders, and make payment of U.S. maintenance fees. Moreover, because CPA is responsible for the docketing of maintenance fees, it is firm policy that maintenance fee due dates are not entered into the Cabinet John Schmitt docketing system.

When Ms. Agniel received U.S. Patent No. 6,285,285, Greenblum & Bernstein was responsible for docketing for and paying the maintenance fees. Because Greenblum & Bernstein was responsible for the maintenance fees, it was not necessary, at that time, for Ms. Agniel to contact CPA to monitor and docket for paying the maintenance fees. However, as the maintenance fee policy change occurred after the first maintenance fee had been paid, Ms. Agniel did not receive her normal trigger to engage the services of CPA, i.e., a copy of the U.S. Letters patent. As a result, Ms. Agniel inadvertently failed to instruct CPA to monitor and docket

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maintenance fee due dates of U.S. Patent No. 6,285,285.

Cabinet John Schmitt handles a large volume of applications and because CPA was inadvertently not contacted in this particular file to docket for and pay the second and subsequent maintenance fees because the change in responsibility for docketing and paying the maintenance fees occurred during the maintenance fee stage of U.S. Patent No. 6,285,285, Cabinet John Schmitt did not have any internal systems to alert them to the due dates. Further, as the maintenance fee reminder letter was not forwarded to Cabinet John Schmitt, the law firm was not alerted to contact the patent owner in order to request instructions as to whether the U.S. patent was to be maintained through payment of the second maintenance fee. Finally, as the patent expiration letter was not forwarded to Cabinet John Schmitt, the law firm was not informed of the expiration of the patent.

The patent owner, Biolog S.A., learned from a potential purchaser/licensee on November 22, 2011 that the patent had lapsed, and the patent owner contacted Cabinet John Schmitt on the same date requesting an explanation of the patent's status. Mr. John Schmitt contacted Greenblum & Bernstein by email dated November 22, 2011 asking whether U.S. Patent No. 6,285,285 could be revived. The undersigned replied to Mr. Schmitt's letter noting that, as the patent had been expired for more than 24 months, that a Petition for Acceptance of Delay Maintenance Fee in Expired Patent would be required under the unavoidable standard of 37 C.F.R. 1.378(b). Greenblum & Bernstein provided details of the petition and presented the requirements for making the showing that the delay was unavoidable.

Greenblum & Bernstein made inquiries to ascertain the relevant facts related to this matter to assist them in preparing this Petition, and promptly prepared this grantable petition for filing in the U.S. Patent and Trademark Office. The need to investigate and assemble the evidence necessary to file this grantable petition, resulted in any delay from the time of discovery of expiration of the above-identified patent until the time of filing the instant petition.

CONCLUSION

Due to the circumstances described, the missed payment of the second maintenance fee was caused by circumstances which were entirely unavoidable. Furthermore, for the reasons

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given *supra*, the instant petition was filed promptly.

Accordingly, acceptance of the delayed payment of the maintenance fee due on the above-identified patent is respectfully requested, whereby the patent will not be considered as having been expired.

The Commissioner is hereby authorized to charge any additional fees, or credit any overpayment to Deposit Account No. 19-0089.

Respectfully submitted,
Jean-Claude MONGRENIER

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Filed : November 13, 2000 Issued: September 4, 2001
For : DEVICE FOR ASSOCIATING A CONTAINER AND A COMPUTERIZED
DEVICE MONITORING ITS CONTENTS

VERIFIED STATEMENT IN SUPPORT OF PETITION TO ACCEPT DELAYED
PAYMENT OF MAINTENANCE FEE UNDER 37 C.F.R. 1.378(b)

Commissioner for Patents
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401 Dulany Street
Alexandria, VA 22314

Sir:

I, Hélène Agniel, make the following statements as to my personal involvement with the above-captioned application.

(1) I have been employed by the French law firm of Cabinet John Schmitt, located at 9, rue Pizay, 69001 Lyon, France, for 34 years.

(2) In the course of my employment, I am responsible for monitoring maintenance fees for clients who have received U.S. patents. In the course of my duties, upon receipt of the U.S. Letters Patent, I contact Computer Patent Annuities (CPA) and provide instructions for CPA to docket for payment, send reminders, and make payment of U.S. maintenance fees.

(3) According to our firm policy, because CPA is responsible for the docketing of maintenance fees, maintenance fee due dates are not entered into our docketing system.

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(3) The U.S. law firm of Greenblum & Bernstein, P.L.C., who prosecuted the application that matured into U.S. Patent No. 6,285,285, paid the first maintenance fee on March 2005.

(4) A March 16, 2006 letter from Greenblum & Bernstein, P.L.C. informing our firm that, effective January 2007, Greenblum & Bernstein, P.L.C. would no longer be responsible for docketing and payment of U.S. maintenance fees or for sending reminders or correspondence from the U.S. Patent and Trademark Office regarding maintenance fees was forwarded to me.

(5) On March 26, 2006, our firm acknowledged the new Greenblum & Bernstein, P.L.C. maintenance fee policy that Cabinet John Schmitt would be responsible for monitoring and paying U.S. maintenance fees in patents obtained by Greenblum & Bernstein, P.L.C.

(6) As the maintenance fee policy change by Greenblum & Bernstein, P.L.C. occurred during the maintenance fee payment stage of U.S. Patent No. 6,285,285, I did not receive the granted U.S. Letters Patent, which is my trigger to contact CPA. Thus, in this instance, I inadvertently failed to instruct CPA to monitor and docket maintenance fee due dates for U.S. Patent No. 6,285,285.

(7) Consistent with the new policy, I did not receive a copy of the Maintenance Fee Reminder or a copy of the Notice of Patent Expiration, and was, therefore, unaware of the expiration of U.S. Patent No. 6,285,285.

(8) According to my knowledge of the facts related to this matter, it is my understanding Mr. John Schmitt, the principle of Cabinet John Schmitt, was contacted on November 22, 2011 by

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a representative of the assignee Biolog, SA inquiring whether U.S. Patent No. 6,285,285 was still in force.

(9) According to my knowledge of the facts related to this matter, it is my understanding that John Schmitt, upon finding the second maintenance fee was not paid, contacted the law firm of Greenblum & Bernstein, P.L.C. on November 22, 2011 to inquire whether U.S. Patent No. 6,285,285 could be revived since the non-payment of the maintenance fees patent was the result of an error by Cabinet John Schmitt.

(10) According to my knowledge of the facts related to this matter, it is my understanding that Greenblum & Bernstein, P.L.C. informed Cabinet Schmitt on November 30, 2011 that, because the patent had lapsed more than 24 months earlier, it would be necessary to prepare and file a Petition to Accept Late Payment of Maintenance Fee under the unavoidable standard of 37 C.F.R. 1.378(b).

(11) Based upon my involvement in this matter, Mr. John Schmitt asked me to assist Greenblum & Bernstein, P.L.C. with the preparation and filing of such a petition, including making this statement regarding my knowledge of the facts related to this matter.

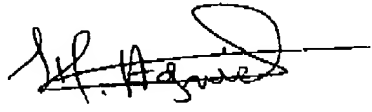
(12) I hereby state that my failure to inform CPA of the second maintenance fee due date U.S. Patent No. 6,285,285 was an error that resulted in an unavoidable delay in paying the maintenance fee, and that after the assignee was notified of the expiration of the patent, I acted diligently to assist in the preparation and prompt filing of this grantable petition under 37 C.F.R. 1.378(b).

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I further declare that all statements made herein of my own knowledge are true and that all statements made on information and belief are believed to be true; and further, that these statements were made with knowledge that willful false statements and the like so made are punishable by fine or imprisonment or both, under Section 1001 of Title 18 of the United States Code, and that such willful false statements may jeopardize the validity of the above-captioned application or any patent issuing therefrom.

19/01/2012
(Date)


Hélène Agniel